

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2003-516

June 10, 2004

MAINE PUBLIC UTILITIES COMMISSION  
Investigation Into and Possible Redesign  
of Investor-Owned T&D Utilities' Rates  
Related to Conservation Expenses

ORDER APPROVING  
PARTIAL STIPULATION

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WELCH, Chairman; DIAMOND and REISHUS, Commissioners

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**I. SUMMARY**

In this Order, we approve a Stipulation entered into by Central Maine Power Company (CMP), Bangor Hydro-Electric Company (BHE), Maine Public Service Company (MPS), the Office of the Public Advocate (OPA) and the Industrial Energy Consumer Group (IECG), and thus approve the rate design proposals contained in the Stipulation to unbundle conservation-related costs from current distribution rates and, with certain limited expectations, recover such costs from all customers on a uniform per kWh basis. This rate design change will be accomplished on a revenue neutral basis and be done without increasing the current Maine jurisdiction delivery rates for any customer class. Under the terms of the Stipulation, the Commission will address the issue of whether customers who are currently on special rate contracts which do not produce sufficient revenue to pay the newly unbundled DSM mil rate should be allowed to participate in ratepayer funded conservation programs.<sup>1</sup>

**II. BACKGROUND**

Pursuant to the provisions of P.L. 2002, ch. 624 (the Conservation Act or Act), the Commission is directed to develop and implement electric conservation programs. The Commission is authorized to pay for the programs, including any necessary administrative costs, by assessing and collecting funds from the transmission and distribution (T&D) utilities.

In order to assess CMP, the Commission had to determine how much conservation-related revenue was being collected from customers after March 1, 2000. *Order on Interim Funding*, Docket No. 2002-161 (June 13, 2002). CMP's T&D rates were last set on a cost of service basis in its so-called "megacase" (Docket No. 97-580) and assumed that CMP would spend the statutory maximum rate of 1.5 mils/kWh on conservation programs. After a series of technical conferences in Docket Nos. 2002-161 and 2002-162, we found that the following amounts had been and were currently in CMP's rates for conservation programs:

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<sup>1</sup> Since the Stipulation does not resolve all issues in the case and thus the case will remain open, we have entitled our decision here as "Order Approving Partial Stipulation."

March, 2000 through December, 2000                      \$.001523 per total kWh delivered<sup>2</sup>

On and after January 1, 2001                              \$.002142 per distribution kWh delivered

*Maine Public Utilities Commission, Interim Electric Conservation Programs*, Docket No. 2001-161, *Maine Public Utilities Commission, Procedures for Conservation Program Planning*, Docket No. 2002-162, Accounting Order (Dec. 31, 2002). In our December 31, 2002 Accounting Order, we noted that the higher per kWh charge beginning in January, 2001 reflected the fact that conservation program costs were allocated entirely to CMP's distribution revenue requirement when CMP's delivery rates were unbundled into separate distribution and stranded cost rates, in *Central Maine Power Company, Request for Alternative Rate Plan (ARP 2000)*, Docket No. 99-666 (Nov. 16, 2000), and was not due to an increase in the conservation program funding amount.

In the BHE megacase, Docket No. 97-596, and the MPS megacase, Docket No. 98-577, the Commission assumed that each utility would spend at the statutory minimum, or 0.5% of total T&D revenue. When BHE's and MPS's rates were unbundled between distribution and stranded cost rates, conservation costs were again assigned completely to the distribution revenue requirement. See *Maine Public Utilities Commission, Investigation of Bangor Hydro-Electric Company's Stranded Cost Revenue Requirement and Rates*, Docket No. 2001-239, Order Approving Stipulation (Feb. 28, 2002), and *Maine Public Utilities Commission, Request for Approval of Alternative Rate Plan*, Docket No. 2003-85, Order Approving Stipulation (Part Two) (Sept. 25, 2003).

On April 4, 2003, we set the funding for the so-called "on-going" conservation programs. *Order on Conservation Program Funding*, Docket No. 2002-162 (April 4, 2003). We decided that all T&D utilities would be assessed at 1.5 mils/kWh, the statutory maximum. *Id.* at 5. For those utilities not yet assessed at the statutory maximum, we decided to phase-in the increased assessment. For CMP, already at 1.5 mils/kWh, the assessment remained unchanged. *Id.* at 6.

On July 23, 2003, we opened this investigation into CMP's, BHE's, and MPS's rate design as it relates to conservation-related expenses. We specifically identified the following issues to be addressed during the course of this proceeding:

1. Whether all conservation-related costs were allocated to the distribution revenue requirement when CMP's and BHE's rates were unbundled into separate distribution, transmission and stranded cost revenue requirements?

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<sup>2</sup> Due to the treatment of conservation costs in the attrition adjustment in Docket No. 97-580, the amount included in rates for conservation, slightly exceeded the statutory maximum amount of \$.0015 per kWh.

2. If the answer to question number 1 is yes, should the Commission conclude that CMP's or BHE's customers that do not pay distribution rates do not pay for conservation-related costs?

3. If the Commission concludes that some customers pay rates that do not reflect conservation costs or reflect a substantially different share of those costs, then

- a. Should the Commission redesign rates so that all customer classes similarly pay for conservation-related expenses? or
- b. If rates are not redesigned to allocate conservation-related costs to all customers, should the Commission permit the customer classes that do not pay for conservation-related expenses to participate in conservation programs?

4. For MPS, how should the Commission allocate conservation costs among the unbundled rates, and should program participation depend on how costs are allocated.<sup>3</sup>

5. What are the answers to questions 2 and 3 above as they relate to special rate contract and other non-core customers?

As the subject of investigation, CMP, BHE and MPS were made parties to this case at the outset. The Notice of Investigation provided other persons who desired to participate in the proceeding with an opportunity to intervene. The OPA, the IECG and Dirigo, the association of Maine consumer-owned electric utilities, filed timely petitions to intervene which were granted without objection.

An initial case conference in this matter was held on August 7, 2003. At the conference, the parties and Advisory Staff discussed their initial views on the issue of whether conservation-related expenses are included in the rates of transmission and sub-transmission level customers of BHE and CMP. After a general discussion about the issue and the process of this investigation, it was agreed that the first step in the investigation should be a filing by each of the three utilities which would describe the history of their rates beginning with their respective "megacases," when generation was separated from transmission and distribution, and how conservation-related expenses have been reflected in their rates since the megacases.

The utilities submitted their initial filings on September 15, 2003 and technical conferences were held on September 25, 2003 and November 20, 2003. Following the

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<sup>3</sup> Subsequent to our issuance of the Notice of Investigation in this case, the issue of how MPS's conservation costs should be allocated when rates were unbundled was addressed in Docket No. 2003-85. *Id.* at 4,

second technical conference, the parties participated in a series of settlement conferences beginning February 12, 2004. On May 26, 2004, we received a stipulation executed by CMP, BHE, MPS, the OPA and the IECG. The Stipulation proposed to resolve all issues in this case, except the issue of whether, and to what extent, customers who may not be fully contributing towards the conservation fund under the agreed upon rate designs, should be allowed to participate in Efficiency Maine programs.

### III. DESCRIPTION OF THE STIPULATION

#### A. Overview

The parties to the Stipulation acknowledge that there is a legitimate and reasonable disagreement among them regarding the history of rate unbundling associated with implementation of restructuring, including disagreement as to whether all customers at all times pay, or should be deemed to pay, adequate monies in rates to fund conservation. The parties do agree, however, based on the information filed in this case and the discussions at the technical and settlement conferences, that for revenue accounting purposes only, CMP, MPS and BHE allocated all conservation-related costs to the distribution revenue requirement in rate proceedings since, and including, the proceeding establishing rates effective March 1, 2000.

The parties agree to redesign rates in such a way as to recover conservation-related costs from all customers, including transmission level customers, without increasing the current Maine jurisdiction delivery rates from any customer class. Conservation-related costs for each utility shall be recovered from all customers on a per kWh basis that is uniform for all customer classes of the utility through a conservation rate which is to be unbundled from distribution rates. This unbundled conservation rate shall be referred to as the "DSM mil rate."

Each utility to the Stipulation agrees to identify its DSM mil rate, included as part of its overall distribution delivery rates, in its terms and conditions on file with the Commission. The parties further agree that for customers with special rate contracts, the Maine jurisdictional revenue shall be deemed to first apply to each utility's DSM mil rate. The specific rate design methodologies used by each utility are described below.

#### B. Utility Specific Rate Recovery and Rate Design Issues

##### 1. Central Maine Power Company

CMP shall unbundle its conservation-related costs from distribution rates and redesign distribution and stranded cost rates in such a manner that total delivery rates remain at current levels and all customer classes contribute to the recovery of conservation costs at CMP's DSM mil rate which is set at \$.001523. CMP's rate design changes consist of: (1) a shift of stranded costs from LGS-ST and LGS-T customers to distribution level customers in an amount necessary to increase LGS-ST

and LGS-T distribution rates to include CMP's DSM mil rate of \$0.001523, (2) an offsetting shift of distribution revenue requirements from distribution level customers to LGS-ST and LGS-T customers, and (3) the unbundling of the DSM mil rate of \$.001523 per kWh from distribution rates. The distribution rates excluding the DSM mil rate agreed to in the Stipulation, will serve as the starting point for CMP's July 1, 2004 price change under ARP 2000 being adjudicated in Docket No. 2004-167.

2. Bangor Hydro-Electric Company

As part of the Commission's decision in Docket No. 97-596, 0.5% of BHE's T&D revenues, or \$514,431, was included in BHE's revenue requirement and rates. The parties agree that \$0.0003817 should be found to be the DSM mil rate which should be separated from BHE's delivery rates prior to the Company's ARP price change to take effect on July 1, 2004. The parties further agree that as a result of the regulatory actions taken to increase BHE's DSM assessment since the Commission's order in Docket No. 97-596, BHE has collected \$429,707 less in rates than its DSM assessments, including carrying costs based on BHE's short-term debt rate.

On July 1, 2004, BHE's DSM assessment will increase from \$0.0006 to \$0.0008 per kWh delivered. The parties agree that effective July 1, 2004, BHE should be authorized to set its DSM mil rate at \$0.00105 per kWh, comprised of \$0.0008 to recover BHE's current assessment and \$0.00025 to recover BHE's deferred DSM asset of \$429,707. BHE's DSM mil rate will be reset on Jul 1, 2005 to reflect the scheduled increase in BHE's DSM assessment, as well as to recover any remaining balance of the deferred DSM regulatory asset. BHE shall defer for future collection or refund any difference between the actual amount recovered from customers (i.e., \$0.00025 per kWh x actual kWh sales) and the \$429,707 deferred DSM asset.

Effective July 1, 2004, the Maine jurisdictional revenue from BHE's customers on bundled special rate contracts will first be applied to the DSM mil rate. This contribution will reduce the amount that four customers pay toward BHE's stranded cost revenue requirements. BHE is authorized to defer these reduced stranded cost contributions based upon actual sales pursuant to these four contracts for the period of July 1, 2004 through February 28, 2005 for recovery in BHE's next stranded cost rate case, Docket No. 2004-112. Effective March 1, 2005 through the term of these existing contracts, these reduced contributions, as well as expected future reduced contributions resulting from projected increases in BHE's DSM mil rate, shall be incorporated into BHE's stranded cost recover requirement calculations in its upcoming stranded cost proceeding.

3. Maine Public Service Company

In Docket No. 2003-85, the Company's 2003 rate case, effective November 1, 2003, the Company's transmission, distribution, and stranded cost revenue requirements were formally separated from what had previously been a bundled revenue requirement and rate design. The Company's distribution revenue

requirement included an amount sufficient to recover the DSM assessment of \$.0006/kWh. Under the terms of the Stipulation, MPS will adjust its distribution rate design so that the per kWh charge for all rate classes is equal to or greater than \$.0006/kWh for all time periods.

The parties agree that MPS's 2004 conservation assessment increase scheduled to occur on July 1, 2004, and all subsequent DSM assessment increases, will be reflected in customer class rates on a uniform per kWh basis. The parties to the Stipulation agree that effective July 1, 2004, MPS shall be allowed to increase the DSM mil rate to \$.0008 kWh and that MPS is authorized to increase rates each July 1<sup>st</sup> to reflect increases in the conservation assessment as ordered in Docket No. 2002-162.

C. Effective Date of Rate Changes

For CMP and BHE, the changes to the distribution delivery rates agreed to will take effect coincident with the 2004 annual ARP price changes. BHE will also increase its DSM mil rate as agreed to on July 1, 2004. For MPS, the effective date for the new distribution rates, including the unbundled DSM mil rate, will be July 1, 2004.

D. Conservation Program Participation

The parties agree that the combined distribution and stranded cost portions of the special contract price for two of CMP's customers is not high enough to cover the CMP DSM mil rate. For these two customers, CMP will collect less than \$.001523 per kWh in conservation costs. The parties agree that all customers of CMP, BHE and MPS, with the exception of these two CMP customers, pay for conservation-related costs at each utilities' DSM mil rates.

The parties agree that customers that pay Maine jurisdictional rates per kWh equal to or greater than the DSM mil rate for that utility should be allowed to fully participate in energy conservation programs offered by the Commission. The parties have not agreed whether and to what extent the two CMP customers noted above contribute, and to what extent such customers may participate in energy conservation programs offered by the Commission. The parties have agreed that the Commission should decide, as part of its final order in this proceeding, after notice to the affected customers and briefing by the parties, whether or not, or to what degree, these two customers should participate in energy conservation programs.

#### IV. DECISION

To accept a stipulation the Commission must find that:

1. the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;

2. the process that led to the stipulation was fair to all parties; and
3. the stipulation results is reasonable and is not contrary to legislative mandates.

See *Central Maine Power Company, Proposed Increase in Rates*, Docket No. 92-345(II), Detailed Opinion and Subsidiary Findings (Me. P.U.C. Jan. 10, 1995), and *Maine Public Service Company, Proposed Increase in Rates (Rate Design)*, Docket No. 95-052, Order (Me. P.U.C. June 26, 1996). We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. See *Northern Utilities, Inc., Proposed Environmental Response Cost Recovery*, Docket No. 96-678, Order Approving Stipulation (Me. P.U.C. April 28, 1997).

All parties to this matter other than Dirigo, which is not directly affected by the results of the Stipulation and which was not an active participant during the proceeding, have entered into the Stipulation before us. These parties represent a broad spectrum of interests and we are thus satisfied that there has been no disenfranchisement, nor any appearance of disenfranchisement here.

In addition, we note that the only non-signing party, Dirigo, has neither objected to the substance of the Stipulation nor to the process that lead up to the Stipulation. Moreover, there has not been any suggestion that the process that lead to the Stipulation was anything but open and fair to all parties. We are thus satisfied that our second criterion has also been satisfied here.

In the past, we have recognized the many different and often conflicting factors must be considered in making rate design decisions and of the difficulty in balancing such factors. *Public Utilities Commission, Investigation of Central Maine Power Company's Stranded Costs, Transmission and Distribution Utility Revenue Requirements and Rate Design*, Docket No. 97-580, Order at 114 (March 19, 1999). As set forth in Section II, *infra.*, the Commission identified a number of issues to be addressed in this proceeding. We find that the Stipulation's proposed rate design methodology of unbundling current rates and establishing a discrete DSM mil rate resolves the issues we sought to be addressed in this proceeding in a manner that ensures that all customers pay equally for ratepayer funded DSM programs and does so without causing adverse bill impacts. For MPS and BHE, whose assessments will be increasing this July and in subsequent years pursuant to the Commission's Order in Docket No. 2002-162, the Stipulation establishes a fair and equitable vehicle of incorporating the revenue effect of such increases into rates.

Finally, we note the Stipulation appropriately reserves for Commission action the policy question of whether, and to what extent, customers who do not pay, or partially pay, the DSM mil rate should be allowed to participate in ratepayer funded DSM

programs.<sup>4</sup> We thus conclude the results of the Stipulation are reasonable, are in the public interest and are not contrary to any legislative mandates.

Accordingly, it is

**O R D E R E D**

1. That the Stipulation executed by Central Maine Power Company, Bangor Hydro-Electric Company, Maine Public Service Company, the Office of the Public Advocate and the Industrial Energy Consumer Group and filed with the Commission on May 26, 2004, is hereby approved. A copy of the Stipulation is attached as Appendix A and is incorporated by reference herein;

2. That the Hearing Examiner in this matter develop a schedule to provide the parties an opportunity to address the issue of whether and to what extent the two special rate contract customers identified should be allowed to participate in ratepayer funded DSM programs.

Dated at Augusta, Maine, this 10<sup>th</sup> day of June, 2004.

**BY ORDER OF THE COMMISSION**

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Diamond  
   Reishus

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<sup>4</sup> An issue which may arise in the future, which is not addressed by the Stipulation is how the Commission should treat a special rate contract which is below the sum of the utility's transmission and DSM mil rate. Arguably, such a rate now could be viewed as being below a utility's marginal cost of service even if there were no other distribution-related costs of serving such a customer since the utility's marginal costs of providing service now might be seen as including the DSM assessment costs caused by such customer.



## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.